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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/756,396

01/14/2004

Paul M. Butterfield

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06/08/2006

OLIFF & BERRIDGE, PLC.

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EXAMINER

ROSENBERGER, RICHARD A

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/756,396

Applicant(s)

BUTTERFIELD ET AL.

Examiner

Richard A. Rosenberger

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/14/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/14/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

1. Claims 6, 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, the phrase “having has” appears to be a typographical error; it is assumed that “having” was intended.

Claim 6 appears to be inconsistent with the invention as described in the body of the specification. Claim 6 calls for “at least one reference/test patch having ... a predetermined uniform density.” The specification does not appear to disclose such a reference pattern. The specification does disclose a printed test pattern (also called in the specification a reference pattern) which is intended to have a uniform density, but not, as claimed, such a pattern known to have a uniform density. The specification does discuss comparing the measured uniformity with standard data, but does not appear to disclose as part of this system and method “at least one reference/test patch havin g... a predetermined uniform density”.

Claim 7 does not end with a period, but with a semicolon. It is unclear whether this is a simple typographical error or if a portion of the claim has been omitted.

It does not appear that claim 7 is a reasonable or accurate claim. Independent claim 7 calls for a kit; and it does not appear that there is in the body of the specification any definition of a “kit”. As set forth in claim 7, the kit comprises in part “a marking system in the field”, which appears to be the printer to the like which is being tested; it does not appear reasonable or accurate to claim a printer being tested as part of a kit for assessing printers. It also appears that claim 7 calls for “a substrate” and “a test pattern of said substrate”, which appears to encompass a sheet of paper and a test pattern

printed on the sheet by the printer being assessed; it seems at least strange to call a test pattern printed by the machine a part of a “kit” for assessment of a printers. It appears that the only parts that might be reasonably considered part of such a kit is the image testing device and the portable word station.

Claim 7 also claims that “said image measurement system is adapted to determine the spatial uniformity ... of the image” which as understood is inaccurate; the measuring device itself (apparently an off-the-shelf device such as the X-Rite® DTP41) does not appear to be modified or “adapted” to perform this function; the measuring device itself appears to be an unmodified measuring device in the same state at which it was obtained; even assuming the use it is being put to is new, such a new use does not alter, or “adapt” the prior measuring device to the new function; the device is inherently “adapted” to the function, even it that adaptation has gone unrecognized previously.

Claim 8 at least inherits the rejection of its parent claim 7 above.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasanuma et al (US 5,579,090).

As in claims 1, 7 and 8, and the other dependent claims as dependent on claim 1, the reference teaches measuring a standard pattern (which can be on a sheet of paper, see claims 4 and 12 of the reference) to determine the uniformity of the image (column 2, lines 22-25). The reference teaches making the measurement with a color measuring device (column 9, lines 53-55) and sending the data to computation means for analysis to determine the uniformity of the image.

As in claim 2, it is at least obvious to make use of the data obtained, including using it to control the printer, copier, or the like as in claim 3. As in claim 4, it would have been obvious to include position data as to where in the image the non-uniformity exists because such information would have been useful to determine where a detected problem may exist for more detailed diagnostics and correction or repair. As in claim 5, the device described in column 9, lines 53-55 is a colorimeter. The use of a standard reference pattern to calibrate the system is known, in manner at least suggested by the reference in the sentence bridging paged 26 and 27, would have been obvious.

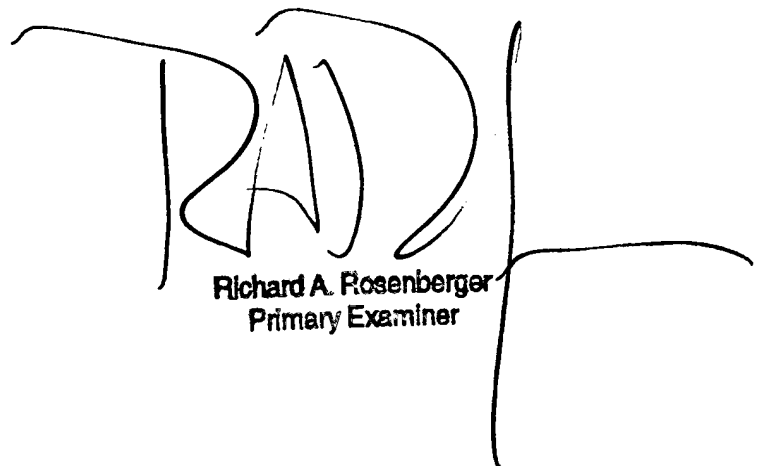
As in claim 7, although the reference appears to place the measuring device and the computer in the printer, it would have been obvious to have them separate because this would allow the testing of machines that do not have such diagnostic systems built in, and would generally reduce the expense of the machines by not requiring the inclusion in the machines of the hardware and software needed for the test; note that the instant specification, page 4, paragraph [0016], discloses that it is known in the art to use a stand-alone scanner to measure non-uniformities in an image.

4. Suzuki et al (US 6,126,264) and Wong et al (US 6,554,388) show systems for measuring the uniformity of an image of a printing device, and using the data to correct for the uniformity.

5. Note the Information Disclosure Statement, form PTO-1449. The application numbers of the two cited applications have been updated to the patent numbers into which the cited applications have matured.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard A. Rosenberger
Primary Examiner

R. A. Rosenberger
2 June 2006